

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., *et al.*,

Debtors.¹

Chapter 11

Case No. 15-[] ()

(Joint Administration Requested)

**MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION FOR
ENTRY OF AN ORDER APPROVING THE FORM AND MANNER OF
NOTICE OF COMMENCEMENT OF THE CHAPTER 11 CASES**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by their undersigned counsel, file this motion (the “Motion”) for entry of an order, the proposed form of which is attached as Exhibit A (the “Order”), pursuant to section 105(a) of Title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (as amended, the “Bankruptcy Code”) and Rule 9007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) approving the form and manner of the notice of commencement of these chapter 11 cases. In support of this Motion, the Debtors rely on the Declaration of Michael R. Castle in support of the Chapter 11

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule 1 attached hereto.

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Justin F. Paget (VSB No. 77949)

*Proposed Counsel to the Debtors
and Debtors in Possession*

Petitions and Related Motions (the “Castle Declaration”). In further support of this Motion, the Debtors submit as follows:

I. Jurisdiction, Venue and Predicates for Relief

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. §157 (b)(2).

2. The predicates for the relief requested herein are section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9007.

II. Background

3. On the date hereof (the “Petition Date”), each of the Debtors filed with the Court their respective voluntary petitions for relief under chapter 11 of Title 11 of the Bankruptcy Code, commencing the above-captioned chapter 11 cases. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. No creditors’ committee has been appointed in these cases. No trustee or examiner has been appointed.

5. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their chapter 11 cases.

6. A full description of the Debtors’ business operations, corporate structures, capital structures, and reasons for commencing these cases is set forth in full in the Castle Declaration, which was filed contemporaneously with this Motion and which is incorporated herein by reference. Additional facts in support of the specific relief sought herein are set forth below.

III. Relief Requested

7. By this Motion, the Debtors seek entry of the Order approving the following proposed procedures for the form and manner of the notice of commencement of the Debtors' chapter 11 cases.

Notice of Commencement Procedures

8. The Debtors propose that American Legal Claims Services, LLC (the "Notice, Claims and Balloting Agent") serve on all known creditors by first class U.S. mail, postage prepaid, the notice of the commencement of the chapter 11 cases and meeting of creditors pursuant to section 341 of the Bankruptcy Code (to the extent a meeting date has been set), substantially in the form of Exhibit 1 annexed to the Order (the "Notice of Commencement").²

9. The Debtors further propose that the Notice, Claims and Balloting Agent serve the Notice of Commencement on or about ten (10) business days following the date of entry of the Order granting the relief requested in this motion.³

² The Debtors have filed concurrently herewith a motion to retain and employ American Legal Claims Services, LLC as the Notice, Claims and Balloting Agent in the Debtors' chapter 11 cases. In connection with the Notice, Claims and Balloting Agent's retention, the Debtors seek authority to provide all required notices to parties in interest in the chapter 11 cases. More specifically, the Debtors propose that, among other things, the Notice, Claims and Balloting Agent will serve all notices required in these chapter 11 cases, including the notice of commencement of the chapter 11 cases and the meeting of creditors pursuant to section 341 of the Bankruptcy Code.

³ The Debtors also filed concurrently herewith a motion requesting that the U.S. Trustee be authorized to schedule the meeting of creditors to be held pursuant to section 341 of the Bankruptcy Code after the 40-day deadline imposed by Bankruptcy Rule 2003(a). Accordingly, the Debtors are requesting authority to mail the Notice of Commencement to creditors on a date measured from entry of the order granting the relief requested in this Motion, rather than the date of the meeting of creditors held pursuant to section 341 of the Bankruptcy Code.

IV. Basis for Relief

10. Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9007 authorize the Court to approve the form, manner and sufficiency of notices provided under the Bankruptcy Rules. *See* 11 U.S.C. § 105(a); Fed. R. Bankr. P. 9007.

11. Bankruptcy Courts in Virginia routinely grant the relief requested herein relating to the mailing of the notice of commencement by the notice, claims and balloting agent. *See, e.g., In re James River Coal Co.*, No. 14-31848 (KRH) (Bankr. E.D. Va. Apr. 10, 2014); *In re AMF Bowling Worldwide, Inc.*, Case No. 12-36495 (KRH) (Bankr. E.D. Va. Nov. 14, 2012); *In re Bear Island Paper Co., L.L.C.*, Case No. 10-31202 (DOT) (Bankr. E.D. Va. Feb. 26, 2010); *In re Movie Gallery, Inc.*, Case No. 10-30696 (DOT) (Bankr. E.D. Va. Feb. 8, 2010); *In re Canal Corp. f/k/a Chesapeake Corp.*, Case No. 08-36642 (DOT) (Bankr. E.D. Va. Dec. 30, 2008); *In re US Movie Gallery, Inc.*, Case No. 07-33849 (DOT) (Bankr. E.D. Va. Oct. 18, 2007); *In re US Airways, Inc.*, Case No. 04-13819 (DOT) (Bankr. E.D. Va. Sept. 15, 2004).

V. Notice

12. The Debtors have served notice of this Motion on (a) the U.S. Trustee; (b) the attorneys for an informal group of holders of the Debtors' prepetition secured notes and lenders under the Debtors' postpetition financing; (c) all known creditors holding secured claims against the Debtors' estates; (d) those creditors holding the 30 largest unsecured claims against the Debtors' estates on a consolidated basis; (e) the Internal Revenue Service; (f) the Canadian Revenue Agency; (g) the Securities and Exchange Commission; (h) the Ontario Securities Commission; and (i) the United States Environmental Protection Agency.

VI. No Previous Request

13. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as is just and proper.

DATED: April 6, 2015

Respectfully submitted,

/s/ Henry P. (Toby) Long, III

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77979)
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*Proposed Counsel to the Debtors
and Debtors in Possession*

SCHEDULE 1
(Debtor Entities)

- | | |
|--|---|
| 1. Xinery Ltd. (3697) | 14. Whitewater Contracting, LLC (7740) |
| 2. Xinery Corp. (3865) | 15. Whitewater Resources, LLC (9929) |
| 3. Xinery Finance (US), Inc. (5692) | 16. Shenandoah Energy, LLC (6770) |
| 4. Pinnacle Insurance Group LLC (6851) | 17. High MAF, LLC (5418) |
| 5. Xinery of West Virginia, Inc. (2401) | 18. Wise Loading Services, LLC (7154) |
| 6. Xinery Straight Creek, Inc. (0071) | 19. Strata Fuels, LLC (1559) |
| 7. Xinery Sales, Inc. (8180) | 20. True Energy, LLC (2894) |
| 8. Xinery Land, Inc. (8121) | 21. Raven Crest Mining, LLC (0122) |
| 9. Middle Fork Mining, Inc. (1593) | 22. Brier Creek Coal Company, LLC (9999) |
| 10. Big Run Mining, Inc. (1585) | 23. Bull Creek Processing Company, LLC (0894) |
| 11. Xinery of Virginia, Inc. (8046) | 24. Raven Crest Minerals, LLC (7746) |
| 12. South Fork Coal Company, LLC (3113) | 25. Raven Crest Leasing, LLC (7844) |
| 13. Sewell Mountain Coal Co., LLC (9737) | 26. Raven Crest Contracting, LLC (7796) |

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., *et al.*,

Debtors.¹

Chapter 11

Case No. 15-[] ()

(Joint Administration Requested)

**ORDER APPROVING THE FORM AND MANNER OF
NOTICE OF COMMENCEMENT OF THE CHAPTER 11 CASES**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of an order, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9007, approving the Debtors’ proposed form and manner of the notice of commencement of their chapter 11 cases, the Court finds that (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b); (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion is in the best interest of the Debtors, their estates and creditors; (iv) proper and adequate

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule 1 attached to the Motion.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

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*Proposed Counsel to the Debtors
and Debtors in Possession*

notice of the Motion and the hearing thereon has been given and that no other or further notice is necessary; and (v) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein. Therefore,

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is hereby GRANTED.
2. The form of the notice of commencement of the chapter 11 cases and the meeting of creditors pursuant to section 341 of the Bankruptcy Code, annexed hereto as Exhibit 1 (the “Notice of Commencement”), is approved.
3. The Debtors, with the assistance of American Legal Claims Services, LLC (the “Notice, Claims and Balloting Agent”), upon the Court’s authorization to engage the Notice, Claims and Balloting Agent, are authorized, but not directed, to undertake all mailings directed by the Court, or the U.S. Trustee, or in accordance with the Bankruptcy Code, including the Notice of Commencement, and any other correspondence that the Debtors may wish to send to parties in interest.
4. The Notice of Commencement shall be served by the Debtors, with the assistance of the Notice, Claims and Balloting Agent, to all known creditors by first-class U.S. mail, postage prepaid, no later than ten business days after the date of entry of this Order.
5. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.
6. Notwithstanding any Bankruptcy Rule or Local Bankruptcy Rule that might otherwise delay the effectiveness of this Order, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

7. All forms of notice provided by the Motion are reasonably calculated to inform interested parties of these chapter 11 cases.

8. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

9. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion.

Dated: _____, 2015

UNITED STATES BANKRUPTCY JUDGE

Entered on Docket: _____

WE ASK FOR THIS:

/s/ Henry P. (Toby) Long, III
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
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*Proposed Counsel to the Debtors
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EXHIBIT 1

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., et al.,

Debtors.¹

Chapter 11

Case No. 15-[] ()

(Joint Administration Requested)

**NOTICE OF COMMENCEMENT OF
CHAPTER 11 CASES AND MEETING OF CREDITORS**

Commencement of Chapter 11 Cases. On April 6, 2015, the above captioned debtors and debtors in possession (collectively, the “Debtors”), filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (as amended, the “Bankruptcy Code”) in the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division (the “Court”).

Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the Bankruptcy Court. You may be sent a copy of a plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the Debtors will remain in possession of the Debtors’ property and may continue to operate their business.

Joint Administration of Cases. Upon a motion by the Debtors, the Court entered an order on [], 2015 [Docket No. ____] authorizing joint administration of the above-captioned cases pursuant to Rule 1015 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”) and Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Western District of Virginia (the “Local Rules”), consolidating the cases for

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*Proposed Counsel to the Debtors
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procedural purposes only under Case No. 15-[] and directing that the joint caption of the cases read In re Xinergy Ltd., et al.

Meeting of Creditors. Pursuant to section 341 of the Bankruptcy Code, the Office of the United States Trustee for the Western District of Virginia (the “U.S. Trustee”) has scheduled a meeting of creditors on _____, 2015, at ____:____.m. (prevailing Eastern Time), at the First Campbell Square Building, 210 First Street, SW, Room 120, Roanoke, VA 24011. The Debtors’ representatives will be present at the meeting to be examined under oath by the U.S. Trustee and by creditors. Creditors are welcome to attend the meeting but are not required to do so. The meeting may be continued and concluded at a later date without further notice.

Creditors May Not Take Certain Actions. The filing of the bankruptcy petition automatically stays certain collection and other actions against the Debtors and the Debtors’ property. Prohibited actions are listed in section 362(a) of the Bankruptcy Code. For example, creditors are prohibited from: (a) contacting the Debtors to demand repayment; (b) taking action against the Debtors to collect money owed to creditors; (c) starting or continuing lawsuits against the Debtors; and (d) taking certain actions against property of the Debtors’ estates. *See* 11 U.S.C. § 362(a). If unauthorized actions are taken by a creditor against the Debtors, the Court may penalize that creditor. A creditor who is considering taking action against the Debtors or their property should review, among other things, section 362(a) of the Bankruptcy Code and seek legal advice.

Notice of Bar Dates for Proofs of Claim. The notice of the bar dates (the “Bar Date Notice”) will be mailed separately. The Bar Date Notice will contain information regarding the bar dates, a proof of claim form and instructions for completing and filing a proof of claim form.

Claims. A Proof of Claim is a signed statement describing a creditor’s claim. If a Proof of Claim form is not included with this Notice, you can obtain one at any Bankruptcy Court Clerk’s office. You may look at the schedules that have been, or will be, filed at the Bankruptcy Court Clerk’s office. If your claim is scheduled and is not listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled, unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all or if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim and may be unable to vote on a plan. **The Bankruptcy Court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice.** A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim may submit the creditor to the jurisdiction of the Bankruptcy Court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadline for filing claims will be set in a later Bankruptcy Court order and will apply to all creditors unless the order provides otherwise. If notice of the order setting the deadline is sent to a creditor at a foreign address, the creditor may file a motion requesting the Bankruptcy Court to extend the deadline. There is no assurance that such a motion would be granted.

Case Management and Administrative Procedures. On [], 2015, the Court entered the [*Order Establishing Certain Notice, Case Management, and Administrative Procedures*] [Docket No. ____] (the “Case Management Order”). All parties who desire to participate in these cases must follow the procedures set forth therein. The Case Management Order provides, among other things, that, except as set forth in the procedures approved by the Case Management Order, notice of proceedings in the chapter 11 cases need only be sent via electronic mail to the parties on the established service list. Any party in interest that desires to receive electronic mail notice in the chapter 11 cases and, consequently, be added to the service list, shall file with the Court a notice of appearance and request for service and shall serve such request on Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn.: Tyler P. Brown, email: tpbrown@hunton.com. All creditors will receive notice of certain proceedings, including, but not limited to, bar dates (unless applicable to a limited population of creditors), the time fixed for filing objections to and any hearing to consider a disclosure statement and/or confirmation of a chapter 11 plan and dismissal or conversion of the chapter 11 cases to another chapter of the Bankruptcy Code. A copy of the procedures approved by the Case Management Order is available from the sources described below.

How to Obtain Documents. All documents filed with the Bankruptcy Court, including the Debtors schedules of assets and liabilities and statements of financial affairs, will be available for inspection at the Bankruptcy Court Clerk’s office or by (a) accessing the Bankruptcy Court’s website, www.vawb.uscourts.gov, (b) contacting the Bankruptcy Court Clerk’s office by telephone at 540-885-3999 or by mail at 289 Walnut Ridge Lane, Staunton, VA 24401, (c) by contacting the Debtors’ notice, claims and balloting agent, American Legal Claims Services, LLC (“ALCS”), by telephone at 904-517-1444 or by mail at P.O. Box 23650, Jacksonville, FL 32241, Attn: Jeffrey Pirrung, or (d) by accessing the website maintained by ALCS at www.americanlegalclaims.com/xinergy.

Attorneys for Debtors. The attorneys representing the Debtors are Tyler P. Brown, Henry P. (Toby) Long, III and Justin F. Paget, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Telephone: (804) 788-8200; Facsimile: (804) 788-8218.

Discharge of Debts and Deadline to File a Complaint to Determine Dischargeability of Certain Debts. Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. *See* Bankruptcy Code § 1141(d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan. If you believe that a debt owed to you is not dischargeable under § 1141(d)(6)(A) of the Bankruptcy Code, you must start a lawsuit by filing a complaint in the Court by [], 2015. The Court Clerk’s Office must receive the complaint and any required filing fee by such deadline.

Local Rule Dismissal Warning. Chapter 11 cases may be dismissed for failure to timely file lists, schedules, and statements. *See* Local Bankruptcy Rule 1007-1

Legal Advice. Neither the Debtors' counsel, ALCS nor the Court Clerk's Office can give you legal advice. You may wish to consult an attorney to protect your rights.

Dated: [], 2015

Clerk of the U.S. Bankruptcy Court,
Commonwealth of Virginia Building, 210 Church
Avenue, Room 200, Roanoke, VA 24011

SCHEDULE 1
(Debtor Entities)

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